IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11838 of 2005
with
SPECIAL CIVIL APPLICATION No. 11836 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT GAS FINANCIAL SERVICESLTD. THRO.AUTHORISED SIGNATORY - Petitioner(s)

Versus

GUJARAT MINERAL DEVELOPMENT CORPORATION LTD. & 1 - Respondent(s)

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Appearance :

1. SCA 11838 of 2005

MR AD DESAI for Petitioner No(s).: 1.
MR HRIDAY BUCH for Respondent No(s).: 1.
MR GM JOSHI for Respondent No(s).: 2.

2.SCA 11836 of 2005

MR GM JOSHI for Petitioner No(s).: 1

MR. HRIDAY BUCH for Respondent No(s).:1

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
Date : 26/08/2005

COMMON ORAL JUDGMENT

1. By filing these two petitions under Articles 226/227 of the Constitution of India, the petitioners of both the petitions seek to challenge the order dated 24.3.2005 recorded below application exh.14, summons for judgement in Summary Suit No. 3207 of 2001 by the learned Judge, Court No.14, City Civil Court, Ahmedabad, by which both the petitioners are permitted to defend the suit on condition to deposit Rs.2,04,000/- in the Court joint and severally within 6 weeks from the date of passing of the order and, on amount being deposited in the Court, the petitioners then after shall be entitled to file their written statement within six weeks from the date of depositing the aforesaid amount. Then after, the suit shall be transferred to the list of long causes suits.

2. Respondent No.1-Gujarat Mineral Development Corporation is a Corporation looking after the benefits of the employee by way of investment of the share of provident fund. The petitioner of Special Civil Application No. 11838 who is defendant no.1 of Summary Suit No. 3207 of 2001 is a financial services dealing in investments to the different securities. According to respondent no.1 it has invested by way of securities and public sector undertaking bonds in State of Gujarat worth Rs.33,00,000/- and U.P.Government worth Rs.20,00,000/-. The said investment was made through petitioners. Therefore respondent no.1 was entitled to get the interest accrued thereon within the stipulated time and also entitled to get accumulated amount of the

interest commencing from 20.7.1995. Since the petitioner of Special Civil Application no. 11836 of 2005 has not been paid the amount regularly, respondent no.1 was compelled to issue notice to it. The petitioner of Special Civil Application No. 11836 of 2005 is the broker of the petitioner of Special Civil Application No. 11838 of 2005. Therefore, he is also responsible to settle the issue. Since both of them failed to pay the amount, respondent no.1 has filed Summary Suit no. 3207 of 2001 to recover the amount of Rs.5,12,154.50 paise together with interest @ 18% per annum from the date of filing of the suit till its realisation, from petitioner of both the petitions. The petitioner of both the petitions have filed separate application alongwith affidavit, seeking leave to defend the suit unconditionally, inter alia denying all the averments made in the suit as well as application and it was prayed that unconditional leave may be granted to them.

3. The learned trial Judge on the basis of the averments made in the application, summons for judgement and application filed by the petitioners of both the petitions, seeking unconditional leave, come to the conclusion that since the defences are not supported by attending circumstances or document, they should be considered as evasive and false defence. Therefore, conditional leave was granted to them on condition to deposit Rs.2,04,000/- in the Court jointly and severally within 6 week from the date of order, which has given rise to both these petitions.

4. At the time of admission hearing, this Court vide separate order dated 22.6.2005 recorded in both the petitions issued Rule and by way of ad interim relief

further proceedings of Summary Suit No. 3207 of 2001 have been stayed till further orders on condition that petitioners of both the petitions shall deposit Rs.1,02,000 separately in the City Civil Court, Ahmedabad within a period of one week from the date of the order and the learned trial Judge was directed not to permit respondent no.1 to withdraw the said amount till further orders.

5. Mr. A.D.Desai, learned advocate of the petitioner in SCA11838 of 2005 and Mr. G.M.Joshi, learned advocate of the petitioner in SCA 11836 of 2005 have contended that both the petitioners have raised triable issues in the suit which have not been considered in its proper perspective and therefore the learned trial Judge has committed error while imposing conditional leave to defend the suit. Therefore, according to them, the impugned order deserves to be quashed and set aside by allowing both the petitions and thereby the petitioners may be granted unconditional leave to defend the suit. They, therefore, urged to allow both these petitions.

6. Per contra Mr. Hriday Buch, learned advocate of respondent no.1 in both the petitions contended that the order passed by the learned trial Judge is just and proper. The learned trial Judge has considered the evidence produced by both the parties and then has come to the conclusion that the defences are not supported by attending circumstances or documents as they considered it evasive and false defences and therefore the learned trial Judge has imposed the condition upon the petitioners to deposit the amount which does not call for any interference in these two petitions filed under Article 227 of the Constitution of India. He, therefore urged that both the petitions may be

rejected.

7. This Court has considered the submissions advanced by Mr. A.D.Desai, learned advocate of the petitioner in SCA 11838 of 2005, Mr. G.M.Joshi, learned advocate of the petitioner in SCA 11836 of 2005, Mr. Hriday Buch, learned advocate of respondent No.1 in both the petitions and perused the impugned orders.

8. Considering the averments made in the application filed by respondent no.1, summons for judgement and the application filed by both the petitioners, seeking unconditional leave to defend the suit and on going through the record of the case and the order impugned, according to this Court, the learned trial Judge has considered each and every document produced by the parties and has thereafter come to the conclusion that the defences raised by the petitioners are not supported by attending circumstances or document and they are false defences and therefore imposed condition to deposit only 50% amount sought to be recovered. Therefore, this order does not appear to be unjust, unreasonable and illegal.

9. Mr. A.D.Desai and Mr. G.M.Joshi, learned advocates of the petitioners are unable to dislodge the aforesaid findings recorded by the learned trial Judge. This Court also finds itself in complete agreement with the aforesaid findings, as, according to this Court, no other finding could have been reached except the one reached by the learned trial Judge, as according to this Court no illegality or infirmity, much less the jurisdictional error has been committed by the learned trial Judge in passing the impugned order, requiring interference by this Court in exercise of powers

conferred under Article 227 of the Constitution of India.

10.It may be noted that though the petitioners of both the petitions have filed these petitions by labelling them as petitions under Article 226/227 of the Constitution of India, this Court treats them as petitions filed under Article 227 of the Constitution of India.

11.In the case of Sadhana Lodh v/s National Insurance Company Ltd., (2003) 3 SCC 524, a Three Judge Bench of the Supreme Court has held that the petition would not lie under Article 226 of the Constitution of India but the petition would lie under Article 227 of the Constitution of India against the interlocutory order passed by the trial Court.

12.It is settled principle of law that powers vested in Court under Article 227 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the Courts below and it cannot assume suo motu jurisdiction of appellate Court and correct every mistake assumed to have been committed by the Courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex Court in the case of (i) Mohd. Yunus v. Mohd. Mustaqim & others, AIR 1984 SC 38, (ii) Khanna Improvement Trust v. Land Acquisition Tribunal and others (1995) 2 SCC 557 and (iii) H.B.Gandhi v. M/s Gopinath, (1992) Supp. 2 SCC 312 (iv) State of Maharashtra v. Miland and

others, (2000) 1 SCC 4.

13.However, according to this Court, the ends of justice would be met if respondent no.1 is not permitted to withdraw the amount deposited by the petitioners of both the petitions in the City Civil Court, Ahmedabad, in compliance of the order dated 22.6.2005 passed by this Court while issuing Rule, and the City Civil Court, Ahmedabad is directed to invest the amount in a fixed deposit in any nationalised Bank in the name of the Nazir of the Court and the deposit shall be subject to the outcome of the suit.

14.For the foregoing reasons, both the petitions fail and accordingly they are rejected with no order as to costs. Rule is discharged in each of the petitions. Interim relief shall stand vacated in both the petitions.

15.It is directed to the learned Judge, City Civil Court, Ahmedabad that the amount of Rs.1,02,000/- separately deposited by the petitioner of SCA 11838 of 2005 as well as by the petitioner of SCA 11836 of 2005, before the City Civil Court, Ahmedabad, shall be invested in any of the nationalized Bank in the name of the Nazir of the Court in a fixed deposit initially for a period of one year yielding higher rate of interest and the said deposit shall be subject to outcome of the suit.

16.The trial Court is further directed to expedite the suit and try to dispose of the same as early as possible. However, in doing so, regard shall also be had to the exigency of his pending files.

(A.M.Kapadia,J)

Jayanti*